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THE CASE

OF

ALIEN ENEMIES,

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CONSIDERED AND DECIDED

UPON A WRIT OF

HABEAS CORPUS,

ALLOWED ON THE

PETITION OF CHARLES LOCKINGTON,

AN ALIEN ENEMY,

BY

THE HON. WILLIAM TILGHMAN,
Chief Justice of the Supreme Court of
Pennsylvania,

The 22d day of November, 1813.

REPORTED BY
RICHARD BACHE, ESQ.

PHILADELPHIA:
PRINTED BY JOHN BINNS, NO. 70, CHESNUT-STREET.
1813.

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District of Pennsylvania, to wit:

SEAL. BE IT REMEMBERED, That on the twenty-sixth day of November, in the thirty eighth year of the independence of the United States of America, A. D. 1813, RICHARD BACHE, of the said District, hath deposited in this office the title of a Book, the right whereof he claims as Proprietor, in the words following, to wit: "The Case of Alien "Enemies, considered and decided upon a Writ of Habeas Corpus, "allowed on the Petition of Charles Lockington, an Alien Enemy, "by the Hon. William Tilghman, Chief Justice of the Supreme "Court of Pennsylvania, the twenty-second day of November, 1813. "Reported by Richard Bache, Esquire."

In conformity to the Act of the Congress of the United States, intituled, "An act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies during the times therein mentioned." And also to the act, entitled "An act supplementary to an act entitled "An act for the encouragement of learning, by securing the copies of maps, charts and books to the authors and proprietors of such copies during the times therein mentioned," and extending the benefits therof to the arts of designing, engraving, and etching historical and other prints."

D CALDWELL,
Clerk of the District of Pennsylvania.

THE CASE

OF

ALIEN ENEMIES.

THE COMMONWEALTH OF PENNSYLVANIA (on the relation of *Charles Lockington*) *vs.* JOSEPH CORNMAN, Keeper of the Debtors' Apartment, in the Prison of the City and County of Philadelphia.

On the 12th of November, 1813, a *Habeas Corpus* was allowed by the honorable *William Tilghman*, Chief Justice of the Supreme Court of *Pennsylvania*, commanding *Joseph Cornman*, the Keeper of *the Debtors' Apartment*, in the prison of the City and County of *Philadelphia*, forthwith to bring before the Chief Justice, in the Court-room of the Supreme Court, the body of *Charles Lockington*, and to return, with the writ, the cause of commitment and detention. The *Habeas Corpus* was allowed, upon the following petition and affidavit.

To the Honorable William Tilghman, Esquire, Chief Justice of the Supreme Court of Pennsylvania.

The petition of Charles Lockington humbly sheweth, that he is confined in the debtors' apartment of the prison of the city and county of Philadelphia, and restrained of his liberty, not for any criminal matter, but under color and pretence of a warrant from John Smith, Marshal of the United States for the district of Pennsylvania, of which a copy is

hereunto annexed. Your petitioner humbly prays that a *Habeas corpus* may be awarded by your honor, directed to Joseph Cornman, keeper of the debtors' apartment, returnable before your honor at such time as your honor may appoint. And that your honor will examine the facts relating to the cause, and into the cause of your petitioners' confinement and restraint. And thereupon either bail, remand or discharge him, as to justice shall appertain.

(Signed) CHARLES LOCKINGTON.

Robert Kid, of the city of Philadelphia, being duly sworn, deposeth and saith, that Charles Lockington is actually confined and restrained in the debtors' apartment of the prison of the city and county of Philadelphia, to the best of this deponent's knowledge or belief, not by virtue of any commitment or detainer, for any criminal or supposed criminal matter, but under color and pretence of the warrant from John Smith, of which a copy is hereto annexed.

(Signed) ROBERT KID.

Sworn, the 11th day of November, 1813, before me,
(Signed) JACOB BAKER, *Alderman.*

United States,
Pennsylvania District, } *ss.*

Charles Lockington, an alien enemy, having violated the rules prescribed for his government, you are, therefore, charged to receive his body, and him safely keep, until discharged by law.

Given under my hand and seal, this 9th day of November, 1813.

(Signed) JOHN SMITH, *Marshal.*

To the Keeper of the Debtors' Apartment.

I hereby certify the above to be a true copy of the Marshal's commitment.

(Signed) JOSEPH CORNMAN,
Keeper of the Debtors' Apartment.

Let a *Habeas Corpus* be issued, returnable immediately. Hearing to be in the court-room of the Supreme Court, to-morrow morning, at ten o'clock.

(Signed) WILLIAM TILGHMAN.

Nov. 12, 1813.

To the Prothonotary of the Supreme Court for the eastern district.

The writ of *Habeas Corpus*, being returned on the 13th of November, with the Marshal's order, specifying the cause of commitment and detention, the Chief Justice postponed the hearing of the case until Monday the 15th of November, to afford the Marshal an opportunity for preparation.

On the 15th of November, Mr. *Dallas*, the Attorney of the United States, for *Pennsylvania*, filed the following suggestion, on behalf of the Marshal:

THE COMMONWEALTH OF PENNSYLVANIA
vs.
JOSEPH CORNMAN, Keeper of the Debtors' Apartment of the Prison of the City and County of Philadelphia. } *Habeas Corpus.*

In the Matter of Charles Lockington.

And now, to wit, this fifteenth day of November, in the year one thousand eight hundred and thirteen, into the Court-room of the Supreme Court, for the Eastern District of Pennsylvania, before the honorable William Tilghman, Chief Justice of the Supreme Court of Pennsylvania, comes John Smith, Marshal of the District of Pennsylvania, in his proper person, and respectfully gives his honor here to understand and be informed, That, on the eighteenth day of June, in the year one thousand eight hundred and twelve, an act of Congress was passed, declaring war between the United States of America and their territories, and the United Kingdom of Great Bri-

tain and Ireland and the dependencies thereof; that on the nineteenth day of June, one thousand eight hundred and twelve, the President of the United States of America, made public proclamation of the event; and that thereupon all natives, citizens, denizens and subjects of the King of the United Kingdom of Great Britain and Ireland, being males of the age of fourteen years and upwards, who were within the United States, and not actually naturalized, were liable to be apprehended, restrained, secured, and removed, as alien enemies. That the President of the United States, on the event of the said war, was authorized, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, towards the aliens, who should become liable to be apprehended, restrained, secured, and removed, as aforesaid; the manner and degree of the restraint to which they should be subjected; and in what cases, and upon what security, their residence should be permitted; and to provide for the removal of those who, not being permitted to reside within the United States, should refuse or neglect to depart therefrom; and to establish any other regulations which should be found necessary in the premises, and for the public safety.

That the President of the United States, in the due execution of his authority aforesaid, did, among other things, direct and require, by his public notice, issued from the Department of State, on the seventh day of July, in the year one thousand eight hundred and twelve, that "all British subjects, within the United States, should forthwith report to the Marshals (or to the persons to be appointed by them) of the respective States or territories within which they may reside, their names, their age, the time they have been in the United States, the persons composing their families, the places of their residence, and their occupations or pursuits; and whether, and at what time, they have made the application to the courts, required by law, as preparatory to their naturalization. And the Marshals respectively are to make to the Department of State returns of all such Bri-

tish subjects, with the above circumstances annexed to their names."

That the President of the United States, in the due exercise of his authority aforesaid, did further, among other things, direct and require, by his notice, issued from the Department of State on the sixth day of February, in the year of our Lord one thousand eight hundred and thirteen, "that alien enemies, arriving within the limits of the United States, from foreign countries, should, immediately on their arrival, report themselves to the Marshal of the United States, or to his deputy, for the district within which they may be landed. No alien enemy can hereafter proceed from a port or place within one district of the United States to a port or place within another district of the same, by land or water, without a special passport from the Marshal or from the Collector of the customs, as the case may be. Alien enemies of the United States permitted to travel from one district of the United States to another thereof, are forthwith, on their arrival, to report themselves to the Marshal, to whom they are to exhibit their passports. The Marshals and Collectors of the customs of the several districts of the United States are particularly charged with the execution of the provisions of this notification."

That the President, of the United States, in the due execution of his authority aforesaid, did, among other things, further direct and require by his notice issued from the Department of State, on the twenty third day of February, in the year one thousand eight hundred and thirteen, that, "Alien enemies, residing or being within forty miles of tide water, should forthwith apply to the Marshals of the States or territories, in which they respectively are, for passports to retire to such places, beyond that distance from tide water, as might be designated by the Marshals. This regulation, however, is not to be put in force, without special notice, against such alien enemies, not engaged in commerce, as were settled, previously to the declaration of war, in their present abode, or are then pursuing some regular and lawful occupation, unconnected with commerce, and who obtain, monthly, from the Marshal

of the district, in which they reside, permission to remain where they are."

And it was, among other things, expressly given in charge, to the Marshals, by the Secretary of State acting under the authority of the President of the United States, as part of the regulations established by the President of the United States, which were found necessary in the premises and for the public safety, that "all those alien enemies, to whom the said notice had reference, engaged in commerce, who did not immediately conform to the requisition, are to be taken into custody, and conveyed to the places assigned to them, unless special circumstances required indulgence;"—that "the regulations, concerning aliens, established in conformity with the said notice, should be enforced; that the persons designated for removal should immediately repair to the places assigned them for residence; and that an accurate report should be made, of the places of residence, assigned to each alien, with a description of his person."

And the said John Smith, Marshal of the district of Pennsylvania as aforesaid, further respectfully gives the honorable Chief Justice here to understand and be informed, that Charles Lockington, the petitioner, on whose behalf the present writ of *Habeas Corpus* is issued, was, at the time of the said declaration of war, a subject of the said King of the United Kingdom of Great Britain and Ireland, of the age of twenty years and upwards, residing within the United States, to wit, in the city of Philadelphia, and district of Pennsylvania aforesaid, within forty miles of tide water, and was not, at the time of the said declaration of war, nor has he, at any time since, been actually naturalized: that the said Charles Lockington was, at the time of the said declaration of war, and has continued ever since, an alien enemy of the said United States, engaged in, and connected with, commerce; that the said Charles Lockington on the 18th day of July, one thousand eight hundred and twelve, reported himself to the Marshal of the district of Pennsylvania, as an alien and British subject; and on the 13th of March, 1813, the said Charles Lockington applied,

as an alien enemy, to the said John Smith, Marshal of the said district of Pennsylvania, as aforesaid, for a passport to retire to Lancaster, which, upon the application and request of the said Charles Lockington, was afterwards changed to Reading, in the said district of Pennsylvania, a place beyond forty miles from tide water, designated by the said John Smith, Marshal as aforesaid, for the place of the said Charles Lockington's retirement: that on the ninth day of November, one thousand eight hundred and thirteen, the said John Smith, Marshal, as aforesaid, found the said Charles Lockington in the city of Philadelphia, aforesaid, contrary to the form, and in violation, of the terms of the notices, regulations, and passports, in such case made, established and granted as aforesaid: that the said John Smith, Marshal, as aforesaid, thereupon directed and required the said Charles Lockington to retire to Reading, aforesaid, the place designated by the said John Smith, Marshal, as aforesaid, for such retirement as aforesaid; but the said Charles Lockington neglected and refused so to do: that thereupon the said John Smith, Marshal, as aforesaid, acting under the authority of the Constitution and laws of the United States, and in obedience to the regulations by the President of the United States in such case established, as necessary in the premises, and for the public safety, as aforesaid, took the said Charles Lockington into his custody, and placed the said Charles Lockington, for safe keeping, in the debtor's apartment of the prison of the city and county of Philadelphia (no special circumstances in the case requiring indulgence) until the said Charles Lockington could be conveyed, or would, voluntarily, consent, to retire to Reading, as aforesaid, or until the said Charles Lockington was otherwise discharged according to law: that the said debtor's apartment in the prison of the city and county of Philadelphia was, and is, a convenient, usual, and lawful place of confinement, for persons taken into custody, by the Marshal of the district of Pennsylvania, under the authority of the United States: And that the said Charles Lockington, being an alien enemy, concerned in and connected with commerce as aforesaid, is in the custody of the said John Smith, Marshal, as aforesaid, in manner aforesaid, for the

cause and purpose aforesaid; of which due communication has been made to the President of the United States.

And the said John Smith, Marshal as aforesaid, complains against the said Charles Lockington, being an alien enemy as aforesaid, that when the said Charles Lockington was taken into his custody as aforesaid, the said Charles Lockington was resident and at large within the district of Pennsylvania, to the danger of the public peace and safety (as the said John Smith, Marshal as aforesaid, has been informed and believes) and contrary to the tenor and intent of the notices and regulations, which the President of the United States has promulged and established in the premises.

And the said John Smith, Marshal, as aforesaid, respectfully excepts to the jurisdiction of the honorable Chief Justice of Pennsylvania, in the premises, and prays that the said Chief Justice will not take cognizance of the case, nor discharge the said Charles Lockington from his custody aforesaid; submitting, with due deference, to the consideration and decision of the honorable Chief Justice, the following reasons for this his exception:

1. Because, by the Constitution of the United States, Congress possesses, exclusively, the power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water."

2. Because, by the strict principle of the law of nations, the citizens or subjects of the enemy, residing within the United States at the time of the declaration of hostilities, against the United Kingdom of Great Britain and Ireland, were liable to be made prisoners of war. The strict principle of the law, has been liberally and honorably relaxed, in modern times, through the medium of treaties, of statutes, and of proclamations; but the power to relax the principle is connected, inseparably, with the power to enforce it; or, in other words, with the power to declare war.

3. Because the acts of Congress have stated, and limited the indulgences to be shewn to alien enemies, and have assigned, to the federal and state authorities, such portions of jurisdiction on the subject, as public policy and private

justice were deemed to require. So far, therefore, as Congress have empowered the honorable Chief Justice to take cognizance of the case of an alien enemy, in the actual custody of the Marshal of the district of Pennsylvania, under the authority herein before set forth, and no further, a jurisdiction may be sustained, on the present occasion.

4. Because the acts of Congress have not authorised a *single* judge or justice, of a state, to take cognizance of the case of an alien enemy, for the purpose of apprehending an alien enemy; examining and hearing any complaint against him; ordering him to be removed out of the territory of the United States, or to give sureties of his good behaviour, or to be otherwise restrained, conformably to the proclamation, or other regulations, which the President of the United States has established in the premises, nor for any other purpose whatsoever: that the acts of Congress have, for certain specific purposes, vested a jurisdiction in the several courts of the United States, and of each State, having criminal jurisdiction, and in the several judges and justices of the courts of the United States; but such jurisdiction is only vested upon complaint against an alien enemy, who shall be resident and at large, to the danger of the public peace or safety, and contrary to the tenor or intent of the President's proclamation and regulations.

5. Because the acts of Congress have not authorised any federal or state court, nor any federal or state judge, or justice, to discharge an alien enemy from the custody of the Marshal, or from any restraint, to which he has been subjected by the regulations, directions, and orders, of the President of the United States, established and issued in due form of law.

6. Because the honorable Chief Justice cannot derive, nor exercise, a jurisdiction, in the case of an alien enemy, under the constitution and laws of the state of Pennsylvania, if such jurisdiction is, in any wise, contrary to the constitution and laws of the United States, made in pursuance thereof.

7. Because, more especially, the Habeas Corpus act of the state of Pennsylania does not, and could not, authorise

the discharge of an alien enemy, taken into the custody of the Marshal of the district of Pennsylvania, acting under the directions, orders, and regulations, of the President of the United States, in the present case, any more than in the case of every prisoner of war, taken in battle, and, in like manner, assigned to the custody of the said Marshal.

8. Because, as well the said declaration of war by Congress, and the said proclamation, notices, and regulations, of the President of the United States, touching the declaration of war, and the goverment of alien enemies, as the proceedings of the said John Smith, Marshal, as aforesaid, in granting a passport to the said Charles Lockington, and in taking the said Charles Lockington into custody as aforesaid, were acts done under the authority of the Constitution and laws of the United States, and are cognizable by the courts, judges, and justices, of the United States, and not by the courts, judges, and justices, of the state of Pennsylvania.

And the said John Smith, Marshal as aforesaid, (stating, that under the authority of his instructions from the President of the United States, he is ready and desirous to remove the said Charles Lockington to Reading aforesaid, and that he is ready and willing to release the said Charles Lockington from custody, in the said debtor's apartment, of the prison of the city and county of Philadelphia, on condition that the said Charles Lockington shall, forthwith, retire to Reading aforesaid, in conformity to his duty as an alien enemy) respectfully prays, that the suggestion and reasons herein set forth, may be annexed to, and taken as part of, the return to the said writ of Habeas Corpus; and that the said Charles Lockington may be remanded into his custody, for the cause, and for the purposes aforesaid;—the public danger of an illicit intercourse with the fleets and armies of the enemy, (blockading the harbors, and menacing the territory, of the United States) daily increasing.

(Signed) JOHN SMITH, Marshal,
Of the District of Pennsylvania.

Sworn to Return, 18 *Nov.* 1813.

JOSEPH BARNES.

Mr. *Dallas* then proceeded to show, that the several notices, issued from the Department of State, relative to alien enemies, as set forth in the Suggestion, were duly published in the *Democratic Press*, under the dates of the 10th and 22d of July, the 13th, 22d, and 29th of October, 1812; the 11th of February, the 3d of March, and the 31st of May, 1813. He, also, produced the instructions, which the Marshal had received, for carrying the President's regulations into effect, either from the Secretary of State, or from the Commissary General for prisoners of war, including the superintendency of alien enemies, so far as it was necessary and proper to make the instructions public, on the present occasion. As the Chief Justice, in delivering his opinion, adverted to the important parts of the evidence, a statement of them here would be superfluous. On behalf of the prisoner, *Robert Kid*, was examined, as a witness, to prove *Lockington's* want of pecuniary funds; his willingness to retire to Reading, if his expences were paid; and his desire to return to his own country. An extract from a letter written to him by Mr. Barclay, the British agent for prisoners of war, dated the 16th of June, 1813, was, also, read, stating that "he had done all in his power, to obtain the consent of this government, and for leave to take up two ships, for the purpose of removing British subjects, who were desirous of returning to *England*; but that the Secretary of State in his last letter on the subject, informed him, that the President would not, at least for the present, consent that the British subjects, now in the States, should be permitted to leave them, or even return to their former residence within the States."

Mr. *Hare*, in support of a motion, to discharge the prisoner, entered into an extensive political discussion; to which Mr. *Dallas* deemed it his duty to make some reply; but, excluding from this report all extraneous matter, it is sufficient to state, that Mr. *Hare* endeavoured to maintain the following propositions:

1. That alien enemies residing in the United States, on the declaration of war, were not, in any sense, to be regarded as prisoners of war; that, independent of the act of Congress, they were under the protection of the law of nations, which had not, at any period of time, authorised their being treated

as prisoners of war; that without any express license, or safe conduct, such alien enemies, were, by the fair implication of the law of nations, protected in their persons, their liberty, and their effects: and that recent decisions of the Supreme Court of the state of New York, had even pronounced, that alien enemies, residing here, at the declaration of war, and permitted by the government to remain in the United States, were in a capacity to institute and maintain suits at law. 2 *Inst.* 57, *Magna Charta, C,* 30. *Vattel B.* 3, c. 4, § 63. 10 *Johns. Rep.* 69, 117.

2. That the Act of Congress, passed the 6th of July 1798 (4 *vol.* 160) respecting alien enemies, gave to the President, all the power, that he could exercise, in relation to them; and that the power must be exercised in the manner directed by the law: whereas his power, in relation to prisoners of war, is derived from his Constitutional capacity of Commander in Chief of the army and navy of the United States; and is only limited and regulated by the law of war, according to the law of civilized nations.

3. That the Act of Congress declares, that on the breaking out of a war, "all natives, citizens, and denizens, or subjects, of the hostile nation, or government, being males of the age of fourteen years, or upwards, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies:" but the liability must not be regarded as subjecting such alien enemies to be made prisoners, for the purpose of confinement within the United States, but only as subjecting them to be apprehended, restrained and secured, for the purpose of being removed from the United States; a removal solicited, in the present case, by the petitioner, as well as many other British subjects. Resident alien enemies had a right, by the law of nations, to withdraw from the country after a declaration of war; and to refuse them the enjoyment of that right would render the American Government as odious as the Government of *Napolean,* who had seized on every British subject, and confined them in the interior of *France.*

4. That the first section of the Act of Congress authorizes the President, in the event of war, "by his Proclamation

thereof, or other public act, to direct the conduct to be observed, on the part of the United States, towards the aliens, who shall become liable to be apprehended, restrained, secured, and removed, as alien enemies:" but there must be a public act, and it must be the act of the President himself: whereas in the present case, the notices, or acts, do not appear to be public; when dated from "*the Department of State*," they are not under seal; they are not signed by the President, nor by the Secretary of State, nor is the authority of the President mentioned in them; when dated from "*the Office of the Commissary General of Prisoners*," though they are signed by "*John Mason*," there is nothing to shew his authority to announce the acts of the President; and if the notices, or acts, thus informally published, should even be regarded as acts of the Secretary of State, or of the Commissary General of prisoners, which the President allowed them to perform; yet they cannot be deemed valid, or legal, to affect the alien enemies, as the President's power, under the Act of Congress, was strictly personal; was not susceptible of a transfer; and could not be exercised by any substitute, or deputy.

5. That the Act of Congress gives no authority to the President, to employ the agency of the Marshal, for taking any alien enemy into custody, except in the single case, designated in the *third* section; to wit, the removal of an alien enemy, who had been required by the President to depart, out of the territory of the United States; and for such removal, it is declared, that the Marshal shall have the President's warrant.

6. That the second section of the Act of Congress, makes the provision, for carrying into effect, the public acts and regulations of the President, performed and established by virtue of the first section, in relation to alien enemies, upon a resort to the judicial authority, and not by a summary course of executive proceedings. The President could not authorise the Marshal to apprehend, restrain, or secure, an alien enemy within the jurisdiction of the United States; and consequently the Marshal's arrest and commitment in the present case, are acts of usurpation, unconstitutional, tortious, and void. Even if

all the other objections to the imprisonment of *Lockington* were overruled, it would be sufficient to entitle him to a discharge, that he has not been committed by a Court, or Judge, or Justice, (sufficient cause therefor appearing) after a complaint, warrant, and full examination and hearing, according to the positive directions of the *second* section of the Act of Congress. 4 *Vol.* 160, §. 2.

7. That the Chief Justice has complete jurisdiction in the case of an alien enemy, as well as of a citizen, to issue a *Habeas Corpus*, and to discharge him from an unlawful or irregular imprisonment, even under colour of authorisy from the United States. But, in the present case, there is not that colour to maintain the Marshal's arrest and commitment. The magnanimity of the Judges of the Supreme Court of New-York, in issuing a writ of *Habeas Corpus*, directed to Major General *Lewis*, in the case of a citizen, seized by a military force, upon a suspicion of *treason*; and in awarding an *Attachment* for an insufficient return; ought to be imitated by every Court, and Judge of United States. 10 *Johns. Rep.* 328. In the case of the Commonwealth vs. the Marshal of the district (the memorable *Olmstead* case) the Chief Justice had himself, also, decided the law. On the return to the *Habeas Corpus*, in this present case, nothing judicially appears, but an arbitrary assumption of power, by a ministerial officer of the Government, to arrest and imprison an alien enemy, residing in the country, under the protection of the law of nations, and the Act of Congress.

Mr. *Dallas*, in answer to Mr. *Hare*, observed, that the Marshal's Suggestion was uncontradicted, in point of fact; and that, in point of law, its general principles were incontrovertible. In the argument of the adverse counsel, as well as in popular opinion, there existed much misapprehension and error: but a little candor and reflection, would dispel the illusion He, therefore, ventured, for the sake of the public, as well as for the sake of the precedent, about to be established, to pursue the following course of reasoning.

1. That the strict principle of the ancient law of nations subjected alien enemies, residing in a belligerent country, at the breaking out of a war, to be treated as prisoners of war, is a point, in history and jurisprudence, so plain, that it would be a waste of time to prove it, by the authority of the writers on Public Law, or of the Historians of the civilized world. *Magna Charta*, and *Vattel*, cited with a view to destroy the position, will, when correctly understood, serve to maintain it. But, it is agreed, that, in modern times, the strict principle of the law, has been liberally and honorably relaxed; and it is enough, for the present discussion, to consider the state and operation of the modern law: For, in no country is the modern law, recognized with more generosity, or enforced with less rigor, than in the United States; where alien enemies are entitled to every protection, privilege, and security, of the law of treaties, and of the law of nations, enforced by the legislative authority of the union.

2. That in favor of resident alien enemies, the act of Congress, thus expressly provides, that all "who are not "chargeable with actual hostility, or other crime, against "the public safety, shall be allowed for the recovery, dispo- "sal and removal of their goods and effects, and for their de- "parture, the full time, which is, or shall be, stipulated, by "any treaty between the United States, and the hostile na- "tion, or government, of which they shall be natives, citi- "zens, denizens, or subjects: And where no such treaty "shall have existed, *the President of the United States may as- "certain and declare such reasonable time, as may be consis- "tent with the public safety, and according to the dictates of "humanity and national hospitality.*" (Act of 6 July 1798. 4 *Vol.* 160. s. 1. Act of the 6th of July 1812, 11 *Vol.* 303.) Again, "The President of the United States is authorised to "give, at any time within six months after the passage of "the act, passports, *for the safe transportation of any Ship, "or other property*, belonging to British subjects, and which "is now within the limits of the United States." (Act of the 6th of July 1812. 11 *Vol.* 302. §. 6.

3. That in the execution of the trust, thus reposed in the President of the United States, his personal liberality has been amply displayed. Resident alien enemies were permitted freely to withdraw from the country, by land and by water, with their effects, for a period considerably exceeding six months; and the facility of *cartels*, and other conveyances, was afforded on almost every application. From the declaration of war, on the 18th of June 1812, until the issuing of the public notice, on the 23d of February 1813, requiring them to retire to a distance of forty miles, from the tide water, resident alien enemies were subjected to no other restraints, than that of reporting their names to the Marshal, under the public notice of the 7th of July 1812; and that of obtaining a pasport from the Marshal, under the public notice of the 6th of February 1813, in the case of travelling from a city or town in one district, to a city or town in another district. Even alien enemies voluntarily arriving in the country since the declaration of war, and, consequently, under no express or implied safe-conduct or promise of protection, had been subjected to no other restraints, than that of reporting their names, and that of retiring to a distance of 30 miles from tide-water, under the public notice of the 13th of October, 1812. Thus, it appears, that neither the law in itself, nor the manner of carrying the law into effect, can be reproached with unnecessary rigor, or with the slightest departure from "the dictates of humanity and national hospitality." The conduct of the Emperor *Napoleon* has been condemned, not for the removal of British subjects into the interior of France, at a distance from his camps and his arsenals; but for seizing and confining, indiscriminately, every British subject, found within his dominions, on the rupture of the peace of *Amiens*, without allowing them a reasonable time to withdraw, upon the faith of treaties, or the obligations of public law. The conduct of *Great Britain* towards Americans in *England* (even if it has been truly represented, or if her laws, in the case of aliens generally, could be forgotten) can afford no example for the United States; whose harbours are blockaded; whose territory is open to invasion

on all sides; and whose mortifying experience, has taught the necessity of guarding against every possible communication, with the fleets and armies of the enemy. But if the conduct of the American government is to be tested by the conduct of others, her triumph will be great indeed, on appealing to the only applicable standard of comparison,—the proceedings of the governors of the *Canadas* and of *Nova Scotia*, towards American citizens, found within the British territory, on the declaration of war, or since captured in battle, or in commerce.

4. That neither the faith of treaties, nor the law of nations, requires more from a belligerent power, than that resident alien enemies should be allowed a reasonable time, to withdraw from the country, after the declaration of war. If they do not withdraw in a reasonable time, they have made their election to remain; and, without giving them just cause of complaint, they may be subjected to every restraint, which the public safety shall render it expedient to impose. The permission to remain, does, indeed, imply, upon the dictates of humanity, that they shall be secure in their persons and effects; and even (as far as the authority of the New York decisions can legitimately extend) that they may maintain suits at law: but a privilege by implication, can never be established, in opposition to an express and positive negation of the privilege; or, in other words, a safe-conduct, either express or implied, must be enjoyed upon the precise terms and conditions, which the sovereign, allowing it, has recognized or prescribed. *Vattel, B. 3. c. 17. s. 269. 273. 274. 276.* If, therefore, the Acts of Congress, and the authorised public acts of the President, have declared and qualified the privileges of alien enemies, the alien enemies cannot, by implication, from a tacit permission to remain within the United States, acquire, or enjoy, any right, inconsistent with what Congress, and the President, have ordained upon the subject. The reasonable time, for voluntarily withdrawing from the country, allowed to alien enemies, having expired, the demands of humanity, hospitality, and justice are satisfied; and the time, the place, or the manner, of withdrawing, or of being removed, as well as every other spe-

cies of restraint, upon the will and the conduct of alien enemies, must afterwards depend upon the American government, acting with a view to the policy, the interest, and the safety of the people committed to its care. The refusal, therefore, to allow Mr. *Barclay* to take up two vessels (as mentioned in his letter of the 16th of June, 1813), for the transportation of British subjects, from the ports of the United States, directly to the British dominions, can afford no ground of reproach, and does not, by any means, prove a general refusal, to permit alien enemies to depart; but only a refusal, with reference to a particular application, at a particular time, and under peculiar circumstances. Armies were then formed on our northern frontier: squadrons were then stationed along the line of the Atlantic coast: and, after all, is it reasonable, could it be safe, was such a privilege ever before expected, or allowed, that alien enemies, who have made an election to remain, for eighteen months, in the country, after the declaration of war, should be licensed, at will and pleasure, individually, or in bodies, to pass into *Canada*, or *Nova Scotia*; to go on board of the British squadrons on our coast, in our bays, and in our rivers; or to proceed, fraught with all the dangerous information, which they have collected, directly from an American, to an English port? The suspension of all amicable intercourse with the enemy, and his dominions, is an immediate and necessary consequence of the war; but the adverse doctrine would destroy all the policy and advantages of that suspension; and the enemy in *Quebec*, and in *London*, would become as familiar with our means of offensive or defensive war, as he is, on board of the blockading squadrons, with the refreshments of our market, and the intelligence of our press. No: the privilege now claimed, cannot be derived from any principle of the law of nations; and Congress have effectually limited the power of the President himself, in the allowance of the privilege of departure, by declaring, as *to the persons* of resident alien enemies, that the time allowed, for their withdrawing from the country, after the declaration of war, shall be "*such reasonable time as may be consistent with the public safety*, and according to the dictates of humanity

and national policy:" (1 *vol.* 160. *s.* 1.) while, with respect to *the ships or other property*, of resident alien enemies, his authority to grant passports, for safe transportation, was expressly confined to a period of six months, from the 6th day of July, 1812. (11 *vol.* 302. *s.* 6.)

Mr. *Dallas*, having taken these general views of the matter brought into discussion, proceeded, more particularly, to analyse the Act of Congress, of the 6th of July, 1798 (1 *vol.* 160) in order to establish,

I. That the President of the United States is authorised to cause alien enemies, residing in the United States, to be apprehended, restrained, secured, and removed, without resorting to the judicial power.

II. That the President's authority had been exercised, in due form of law.

III. That from the return to the writ of *Habeas Corpus*, and the evidence exhibited by the Marshal of the District of *Pennsylvania*, sufficient appeared to prevent the Chief Justice, from taking further cognizance of the case.

I. The President of the United States is authorised to cause Alien Enemies, residing in the United States, to be apprehended, restrained, secured, and removed, without resorting to the judicial power.

1. The powers of war and peace are vested in the government of the United States; and, whatever may be the wisdom of confiding those powers originally to the Legislative Department, it is indispensable to the conduct and prosecution of a war, once declared, that the Executive Department should be authorised, to apply the political vigilance of the nation, as well as to use the whole of its physical force, against the machinations and the arms of the enemy. A state of war, renders the subjects of the adverse belligerent, enemies, wherever they are found; and, although the duties of hospitality and humanity may require, that in different situations, they should be differently treated; yet, when those duties are performed, it seems a natural and a necessary result, that the Executive Department should be employed, to guard against every possible danger, that may arise from

alien enemies, at home, as well as abroad. The treatment of every European government towards alien enemies, is, indeed, a subject of Executive authority. The Legislature may prescribe general rules of conduct; but it cannot provide for all the emergencies, which the operations of war are calculated to produce. The judicial power, proceeding with its characteristic publicity and deliberation, upon the strict rules of evidence, is incompetent, amidst the din of arms, to guard the nation against dangers, which threaten, as well as against dangers which exist;—against dangers, which can only be averted, by the secrecy that watches, and the celerity that disarms. When, therefore, we find Congress engaged, in calling the departments of government into action, for the public safety, upon the event of war, it is reasonably to be expected that the Executive Department, which is alone endowed with the attributes of *secrecy* and *celerity*, will, also, be charged with the performance of those functions, for which such attributes are essentially required.

2. The application of the Executive power, to the case of resident Alien Enemies, is neither a political, nor a moral, wrong. An Alien Enemy can claim none of the political rights of the Society; and his claim upon the moral character of the Government, must be limited, by the paramount obligations of the Government, towards the people committed to its care. It is true, that, in common speech, those only are denominated "Prisoners of war," who are forcibly captured; but, surely, an Alien Enemy may become a Prisoner, *in consequence of the war*, without being taken in battle; and wherever a resident Alien Enemy, by his own misconduct, or by the just precautions of the Government, is placed in actual confinement, it requires no great indulgence, in the use of language, to describe him, as a Prisoner of war. But from whatever cause an Alien Enemy is actually imprisoned, under the authority of the Government, public policy requires, that he should be securely kept; and that the means of enlargement should be withheld, as much in the case of a Prisoner, for misconduct, or for precaution, as in the case of a Prisoner taken in battle. The privilege of the writ of

Habeas Corpus may be suspended, even with respect to the Citizens of the United States, when, in cases of rebellion, or invasion, the public safety may require it; and it may be correctly considered, as only in the nature of a suspension of the writ of *Habeas Corpus*, with respect to resident Alien Enemies, that the Act of Congress authorises the Executive Department, to exercise a summary jurisdiction over them, without the interposition of the judicial power, originally, or by way of appeal.

3. Upon these premises, the exposition of the Act, entitled "An Act respecting alien enemies," may be justly made, with an equal regard to the dictates of humanity, and to the law of the public safety. The first branch of the *first* section, declares, in the abstract, what was the condition of resident Alien Enemies, at the commencement of the war: "they were liable to be apprehended, restrained, and remov-"ed." But the *proviso* to the first section, qualifies that declaration, by allowing to all resident Alien enemies, "who "were not charged with actual hostility, or other crime "against the public safety," such reasonable time, "as may "be consistent with the public safety, and according to the "dictates of humanity and national hospitality," for the recovery, disposal, and removal, of their goods and effects, "and "for their departure." The President is alone authorised to ascertain and declare, what shall be deemed the allowance of a reasonable time; and a reasonable time being allowed, the *proviso* has performed its office; and all resident Alien Enemies, voluntarily remaining within the United States, are involved in that condition, which makes them "liable to be apprehended, restrained, secured, and removed."

But by what authority are Alien Enemies to be apprehended, restrained, secured, and removed; since, the Act of Congress does not direct that they *shall* be so treated; but only provides, that they *may* be so treated? Independent of all verbal criticisms on the phraseology of the first section of the Act, it is clear, that, in relation to the jurisdiction established by that section, the President alone can *legislate* (if so it may be expressed) by his Proclamation, or other public

act, as to the conduct to be observed, on the part of the United States, towards resident Alien Enemies: he alone can direct *the manner and degree* of the restraint, to which they shall be subject; and in what cases, and upon what security their residence shall be permitted; or provide for the removal of those, who not being permitted to reside in the United States, shall refuse, or neglect, to depart therefrom: and he alone can establish any other regulations, which shall be found necessary in the premises, and for the public safety. Now, it is obvious, that the President has not only the power to declare the law of the conduct, to be observed towards resident Alien Enemies, but to direct the means for carrying the law into effect. If he may direct *the manner*, as well as *the degree* of restraint, may he not direct, that for the disobedience of a Public Notice, an Alien Enemy shall be taken into the custody of the Marshal? If he may direct the cases, in which an Alien Enemy may be permitted to reside within the United States, and upon what security; may he not refuse to permit a residence, upon his own view of the public safety, although the Alien Enemy should not be chargeable with actual hostility, nor be of a character and deportment to beget suspicion of misconduct? If he may provide for the removal of Alien Enemies, who refuse, or neglect, to depart from the United States, when ordered, may he not provide for their arrest and confinement by the Marshal, preparatory to their removal beyond the territory of the United States; for which removal, his warrant must be specifically obtained? If he may establish any other regulations, which he shall himself find necessary in the premises, and for the public safety; may he not establish the regulation, that all Alien Enemies, who refuse to depart from the vicinity of tide-water, shall be removed by the Marshal, or shall be taken into his custody for disobedience? In short, if it is the duty of the President, under the sanction of the first section of the Act, to ascertain the hostile designs of the enemy; to guard against the misconduct of resident Alien Enemies, of every denomination; and to provide, from the secret, as well as the open, sources of Executive information, against every danger, sudden, as

well as distant, which threatens the public safety; may he not, without disclosing to public view, the evidence and the motives of his conduct, adapt the means to the necessity of the occasion, upon the responsibility, which he owes, in common with every public officer, to the Constitution and laws?

Thus, the *first* section of the Act of Congress puts the Executive Department into action, upon the general principles of the law of war: and the authority of the President is applied to every possible case of precaution, as well as to every case of actual hostility, or misconduct. The policy of measures of State, belongs, properly to the consideration of the Legislative Department; the expediency of cautionary measures, in the execution of all laws, and particularly of the laws of war, belongs properly to the consideration of the Executive Department; but there is still an ample field for the agency of the Judicial Department, in taking cognizance of complaints, upon subjects within the policy of the law, but not within the scope of the Executive measures, adopted to carry the law into effect.

4. Hence, the *second* section of the Act of Congress puts the Judicial power into action, not as the means of carrying the Executive authority, created by the first section, into effect, but as an auxiliary, to accomplish the general policy of the law. Would it not be an extraordinary employment of the Judicial power, to require, that a measure of State, and of war, predetermined by the Executive Magistrate of the Union, upon secret information, and cogent motives, should be publicly submitted to the investigation of a Court, or of a single Judge, with power "after a full examination and hearing," to affirm, or reject, the measure, as the Court, or the Judge, should decide? Yet, this must be the effect of the adverse doctrine. For instance: the President shall deem it necessary for the public safety, immediately to remove all Alien Enemies, from the vicinity of tide water, or from a particular station, menaced by a fleet, or an army; but he cannot remove one of them, unless a Court of criminal jurisdiction is in session, on the spot; or a Judge of a Court of the United States, is at hand; nor even if he could command the facility of such a

Court in session, or of such a Judge at hand, can the removal be effected, until a complaint has been made in due form of law; until the case of every Alien Enemy has been fully examined and heard; and until the Court, or Judge, has determined, upon the evidence, that sufficient cause appears, for the removal! The bare statement of such a consequence, must prepare the mind to resist the construction from which it flows, if any other reasonable construction can be given to the Act of Congress.

It is to be considered, therefore, that the Executive authority, created by the *first* section of the Act of Congress, does not reach every possible case of danger, to which the care of the Government ought to be extended. Alien Enemies, permitted to reside at large, within the district, at places far distant from the seat of the Federal Government, may, occasionally, become dangerous, by personal misconduct, to the public peace, or safety: Alien Enemies directed by the President's regulations to withdraw from particular stations, may disobey, beyond the view of the Executive and Ministerial officers of the Federal Government: Alien Enemies, may be subjected to various other restraints, by the President's regulations, although no particular mode of proceeding against them, for disobedience should be prescribed: In these, and in a great variety of other probable cases, the Courts of criminal jurisdiction, and the Federal Judges, individually, are authorised to interfere, upon the complaint, not only of the Marshal, but of any member of the community; not only upon an official call for judicial aid, but upon an original complaint, that an Alien Enemy is resident, and at large, within the district, to the danger of the public peace, or safety, and contrary to the tenor, or intent, of the regulations, which the President has established. Whatever the President may do, under the authority created by the *first* section of the Act, the Courts of criminal jurisdiction, and the Federal Judges, individually, may do, under the authority created by the *second* section: they are to hear and to examine, and to decide, for themselves: they are not to enforce the President's orders according to his judgment, but to make

their own orders according to their own judgment: And they may order an Alien Enemy, "resident and at large, *to the danger of the public peace and safety*, to be removed out of the territory of the United States, to give sureties for good behaviour, or to be otherwise restrained, conformably to the President's Proclamation, or regulations;" but they are to judge and decide, not the Executive Magistrate, as well whether the danger to the public peace and safety exists, as whether the case is within the words and meaning of the President's regulations, Such a course of proceeding would be correct and usual, upon complaints brought, originally, before the judicial authority: but cases, which the President has himself already decided, to be cases of danger, within the meaning of his regulations, can only be submitted, to "the full examination and hearing" of a Court, or a Judge, in the nature of an appeal, for which the juridical history of nations, can furnish no principle, or precedent.

But does not the *third* section of the Act conclusively show, that the Executive authority, and the Judicial authority, move upon a distinct impulse, in distinct spheres? It is there made the duty of the Marshal, to provide for removing out of the territory of the United States, Alien Enemies, who by the President of the United States, or by order of a Court, Judge or Justice, as aforesaid, shall be required to depart and to be removed as aforesaid:" And "for such removal, the Marshal shall have the warrant of the President of the United States, or of the Court, Judge, or Justice, ordering the same, as the case may be:" that is, if the removal is ordered by the President, his warrant shall sanction it; if it is ordered by a Court, or Judge, or Justice, a judicial warrant must be obtained. It will readily be seen, that for all restraints imposed on Alien Enemies within a district of the United States, the Marshal's official duty, and powers, are sufficient, without any additional provision by law; but for any ex-territorial agency, extending beyond the United States, or even beyond a particular district, it was necessary to make it the duty of the Marshal of the district, in which the Alien Enemy, is *apprehended*, "to provide for the removal;

"and to execute such order, by himself, or his deputies, or "other discreet person, or persons, to be employed by him." But whence does the President derive the power of ordering an Alien Enemy, to remove from the United States? It is not granted by the *third* section of the Act, where it is obviously mentioned as a power previously created; and, therefore, it can only be derived from the *first* section, which creates all the authority of the President, upon the subject. In the *first* section, then, the President's power, to remove an Alien Enemy from the United States, is given precisely in the same manner, and in the same passage, as the power, "to apprehend, restrain, and secure," an Alien Enemy, within the territory of the United States: And when it is found, that the President is authorised to execute, upon his own warrant, his order for the removal of an Alien Enemy, from the United States, without resorting to any Court, Judge, or Justice; upon what principle of discrimination (if it is true, in jurisprudence, as it is in mathematics, that the greater always comprises the less) can it be asserted, that he is not authorised to execute, upon his own directions to the Marshal, his orders, for apprehending, restraining, and securing, Alien Enemies, within the jurisdiction of the United States?

II. The President's authority has been exercised, in due form of law.

1. The Constitution of the United States, contemplates the establishment of Executive Departments, to aid in the performance of the business of the Chief Executive Magistrate; and, accordingly, "The Department of State" (1 *vol.* 359 *Ibid.* 41) "The Department of War" (1 *vol* 38) and "The "Department of the Navy" (1 *vol.* 100) have been established. Each of these Departments acts, under the orders of the President, according to the respective objects of their institution; and the mode of acting differs, upon different occasions. But whatever is the adopted and customary form of the Department, in announcing its acts, must be considered, as the legitimate form of authentication, unless an Act of Congress, shall, in particular instances, prescribe another.

2. "The Department of State," is the appropriate organ to communicate, both at home and abroad, the public acts of the President, in relation to affairs of State, which do not belong to military or naval duties; and it is expressly provided, that the Secretary of State, "shall conduct the business of the said Department, in such manner as the President of the United States, shall, from time to time, order, or instruct." (1 *vol.* 359, §. 1) The Acts of Congress provide for a Seal of the United States, and a seal of office, to be kept and affixed, on particular occasions, by the Secretary of State. The seal of the United Srtes, however, can only be affixed to civil commissions; and such other instruments, or acts, for which the President shall grant a special warrant. (1 *vol* 41, §. 4) And the seal of office is applied, to authenticate "all copies of records and papers in the said office," rendering them evidence, equally as the original record, or paper. It is usual with the President, to grant a warrant, for affixing the seal of the United States, to Proclamations of a general, solemn, character: but *public notices*, issued by his directions, in execution of particular duties, enjoined by Acts of Congress, or arising out of special circumstances, are, usually, in the form of the Notices, which have issued, in relation to Alien Enemies, authenticated by the siyle of office, "The Department of State," which is as appropriate, and as exclusive in its use, as any name, that could be subjoined. Such forms are well known, in the practice of the *English*, as well as of the *American*, Government.

3. The Notices are *public acts*, because they issue from "the Department of State," and because they have been inserted, in all the newspapers, which are employed by the Government, to give publicity to the laws. They are the public acts of the *President*, because they have issued from the "Department of State," in the usual form; because, the President alone was competent to the performance of the acts; because, under such circumstances, the publication of the acts, has never been disclaimed; and because they have been, universally, recognized and enforced as the acts of the President, for a period of eighteen months. But, after all, if it

were possible to entertain a judicial doubt on the subject, an opportunity would be judicially afforded, to add to the intrinsic evidence, and the oath of the Marshal, the consummation of the proof, which exists at *Washington*.

III. From the return to the Writ of *Habeas Corpus*, and the evidence exhibited by the Marshal of the District of *Pennsylvania*, sufficient appears to prevent *the Chief Justice*, from taking further cognizance of the case.

1. In issuing a writ of *Habeas Corpus*, it is agreed, that a Judge should exercise the most liberal discretion; and upon the slightest doubt of the lawfulness of the alledged imprisonment, he ought to institute an enquiry. But if, on the return, it appears, that the commitment was lawful; or, that the case itself, does not belong to the jurisdiction of the Judge, who issued the writ, the Prisoner cannot be discharged. There is no injustice done to individuals; there is no outrage committed upon personal liberty; by restraining Judges, Federal, or State, within the jurisdiction, which the law of the land assigns to them. If the Constitution of the United States, in the present instance, as in many other instances, gives to the Federal Judiciary an exclusive jurisdiction, there is no cause of complaint; nor is it any encroachment on the liberty, even of a Citizen, to say, that he shall not enjoy a variety of modes, for the redress of a grievance; provided some known and effectual mode of redress, is given, for every grievance, either in the Federal, or the State, course of administering justice. To the national Government, all national questions are properly referred: and an Alien Enemy, has no pretence for clamour, because he cannot be relieved by a State Judge, or a State Court, if a Federal Judge, or a Federal Court, is competent, to bestow all the relief, to which the law of nations, the law of treaties, and the law of the land, may entitle him. The refusal of the Chief Justice, to sustain the present *Habeas Corpus*, does not leave the Prisoner without remedy, for any real trespass upon his rights; since the Courts and Judges of the United States have an unquestionable jurisdiction upon the whole case.

2. But a *single* State Judge, has not a jurisdiction, upon the whole case; and, therefore, he should be particularly cautious, in exercising jurisdiction, upon any part of it. Suppose, for a moment, that *the form* of placing the Prisoner in custody, is defective, shall it be said, that the Chief Justice *must* discharge him? For, although the cause for the imprisonment, is amply sufficient, yet of the cause, the Chief Justice, under the *second* section of the Act of Congress, can take no cognizance: the jurisdiction, in that respect, is exclusively vested in the Federal Courts, in the State Courts, having criminal jurisdiction, and in the Judges of the Federal Courts, individually. Then, the proposition will be, that, upon this *Habeas Corpus*, the Chief Justice may *discharge*, for want of form; but that he cannot *commit*, for matter of substance; and the authority to act in the same way (the authority of issuing and deciding upon writs of *Habeas Corpus*), resides in every President and Associate Judge, of every Court of Common Pleas, in every County of the State, without a power of revisal, before any other tribunal, Federal, or State! Under such circumstances, the Federal authority, upon questions of war and peace; the Federal responsibility, on the regulation and control of Alien Enemies; must become worse than a mockery.

3. The Federal Government, possessing all the powers of war and peace, including the regulation of the conduct, to be observed towards resident Alien Enemies, meant, by the Act of Congress, to legislate upon the whole subject of Alien Enemies; and to declare all the jurisdiction, which the Federal and State judicial authorities might exercise. A State judicial authority may fairly, however, issue a writ of *Habeas Corpus*, to enquire into the cause of an imprisonment, in a doubtful case; but whence does a State judicial authority derive its sanction, for enquiring into, and, more especially, for deciding upon the cause of an imprisonment, like the present, clearly appearing upon the commitment and return? For, it appears that *Charles Lockington*, an Alien Enemy, has been taken into the custody of the Marshal, in obedience to the orders of the President of the United States, for a breach

of the regulations, which the President had established, under the authority of the Act of Congress. Can a single Judge of *Pennsylvania*, discharge *Charles Lockington*, the Alien Enemy, upon speculations, whether all the forms, of which the case is susceptible, have been pursued by the President, by the Secretary of State, by the Commissary General of Prisoners, and by the Marshal? An affirmative answer would annihilate all the energy of the Government, for the purposes of war. As to the Marshal's Certificate to the Keeper of the Prison, it has been improperly termed an usurpation of judicial power. The State of Pennsylvania, in compliance with the request of Congress, has accommodated the United States, with the use of her Prisons, for the safe-keeping of persons, arrested under their authority. The Prisoners of the Marshal are placed, therefore, in the Prison, not by an exercise of judicial power, but just as the Sheriff places his Prisoners there; and, in the present instance, the Marshal's Certificate is given to the Keeper of the Prison, not as the warrant for taking *Charles Lockington* into custody (the warrant for that act proceeds from the President) but as a voucher, for holding him, in safe keeping, and, virtually, in the custody of the Marshal.

4. The Prisoner is, then, an Alien Enemy, confined under the authority of the Constitution and Laws of the United States, and of the regulations established by the President: in other words, he is a Prisoner, in consequence of the war; can he be discharged by any single Judge of the State, who is authorised to issue a writ of *Habeas Corpus*? Prisoners of war, in the strict use of the denomination, cannot have the benefit of a writ of *Habeas Corpus;* nay, they cannot be removed, from the place of confinement, upon a *Habeas Corpus*, to give testimony in a cause, upon trial. 2 *Burr.* 765. 2 *Black. Rep.* 132. *Doug.* 403. If, therefore, the authority to decide, when resident Alien Enemies, ought to be "apprehended, restrained, secured, and removed," belongs to the President, does not the principle of law, which denies to a Prisoner of war, the privilege of the writ of *Habeas Corpus*, equally deny the privilege, to a resident Alien Enemy,

imprisoned by the President, in consequence of the war? On this point, however, the case rests not upon argument, but upon judicial authority: and Chief Justice *Kent* (supported, in a great degree, by Chief Judge *Nicholson*, of *Maryland*) has expressly declared, from the Bench of the Supreme Court of *New-York*, that in a case, like the present, upon principle, "it would not only be unfit for the Court to interpose, so "long as the Courts and Judges of the *United States* have "ample and perfect jurisdiction, over the whole subject mat-"ter; but that it would, also, be exercising power without "any jurisdiction;" and, therefore, he was of opinion that a writ of *Habeas Corpus* ought to be denied. 9 *Johns. Rep.* 239. 2 *Law Journ.* 192. 1 *Johns. Cases*, 136.

The Chief Justice continued the case under advisement, till Monday, the 22d day of November, 1813, when he delivered the following opinion.

Tilghman, *Chief Justice:* From the return to this writ of *Habeas Corpus*, and the evidence, which has been produced, it appears, that *Charles Lockington*, who is a Subject of the British King, came into the *United States*, before the declaration of war, and has never been naturalized. His business was connected with commerce; and on the 18th of July, 1812, he reported himself to *John Smith*, Marshal of the District of *Pennsylvania*, as an Alien, and British Subject. On the 19th of March 1813, he applied, as an Alien Enemy, for the Marshal's passport, to repair to *Lancaster*, which was granted; and, at his own request, afterwards changed to *Reading;* in pursuance of an order issued from the office of the Secretary of State, by which all Alien Enemies (with certain exceptions, not including the case of Mr. *Lockington*) were directed to retire, to a place above forty miles from tide water, to be designated by the Marshal. On the 9th of the present month, the Marshal found Mr. *Lockington* in this City, in violation of the order above mentioned; upon which he required him to retire to *Reading*. This being refused by Mr. *Lockington*, the Marshal took him into

his custody, and placed him, for safe keeping, in the Debtor's Apartment, of the Prison of the City and County of *Philadelphia*, until he could be conveyed, or would consent to retire, to *Reading*, or should be discharged by due course of law. The reason assigned by *Lockington*, for coming from *Reading* to *Philadelphia*, was the want of money to subsist in *Reading*; and he offered to return thither, if the Marshal would furnish him with money. War having been declared by the Congress of the United States, on the 18th day of June 1812, proclamation of that event was made by the President on the day following. On the 7th day of July, in the same year, a notice was issued from the Department of State, and published in those newspapers, in which the laws of the United States are published, by which all British Subjects were required, to make report of themselves to the Marshals of the districts, in which they resided; and at the same time the several Marshals were directed to cause the laws, which relate to Alien Enemies, to be published, in order that such persons might be informed of the situation, in which they stood. Those laws were, accordingly, published. On the 23d of February 1813, an order was issued from the Department of State, and published in the newspapers, by which "Alien Enemies, residing, or being, within forty miles of "tide water, were required forthwith to apply to the Mar-"shals of the States, or Territories, in which they, respec-"tively, resided, for passports, to retire to such places, be-"yond that distance from tide water, as should be designated "by the Marshals;" subject to certain exceptions, not affecting the present case. At the same time the several Marshals of the *United States* received instructions from the Department of State, to take into custody, and convey to the places assigned to them, all persons to whom the said requisition was applicable, and who did not immediately conform to it. On the 15th of April 1813, the several Marshals were informed, by a notice from the Department of State, that the President had appointed *John Mason* Esq. Commissary General for Prisoners of War, "including the Superin-"tendance of Alien Enemies;" and that, in future, all let-

ters and documents on those subjects, were to be addressed to that gentleman; and all instructions from him, in relation to the same, were to be obeyed; unless otherwise directed, from the Department of State. On the 31st of May 1813, a circular letter, signed by *John Mason*, was addressed to the several Marshals of the United States, and published in the newspapers. This letter was dated "Office of Commissary "General of Prisoners, Washington, May 31 1813," and is expressed in the following form: "*The President*, being de- "sirous of defining, more particularly, the treatment of "Alien Enemies, and of extending as much indulgence to "them, as may be compatible, with the precautions made "necessary, by the present state of things, *directs*, that, in "regard to such as may be within your District, you will be "governed by the following rules. You will cause to be re- "moved, as heretofore prescribed, if not already done, under "the former orders from the Department of State, all who "are not females, or under eighteen years of age, who are "not labourers, mechanics, or manufacturers, arrived in the "country previous to the declaration of war, and actually em- "ployed in their several vocations: subject, however, to the "following modifications." Then follow the modifications, none of which apply to Mr. *Lockington*. These are all the facts of any importance on the present question.

It has been contended, that the orders issued from the public offices, are not to be considered, as the acts of the President; and that, if they are his acts, they are not authorised by law. Both these objections shall be considered; but I shall first advert to the point, introduced in the suggestion filed by the Marshal, which goes to the jurisdiction of a State Judge, in cases like the present. It is supposed that the State Judges have no authority to issue a writ of *Habeas Corpus*, because the power of declaring war, being vested in the Congress of the *United States*, all matters appertaining to that subject, must be under their controul; that Congress, if it had pleased them, might have considered Alien Enemies, as Prisoners of War, who are not entitled to the benefit of a writ of *Habeas Corpus*; and, finally, that as the laws of

the United States have given to the State Judges, a certain jurisdiction, with respect to Alien Enemies (which I shall have occasion to mention hereafter) but have not given to them authority, to interpose by a writ of *Habeas Corpus*, that writ ought not to be issued. In answer to these suggestions, it is to be observed, that the authority of the State Judges, in cases of *Habeas Corpus*, emanates from the several states, and not from the United States. In order to destroy their jurisdiction, therefore, it is necessary to shew, not that the United States have given them jurisdiction; but that Congress possess, and have exercised, the power of taking away that jurisdiction, which the States have vested in their own Judges. Our Act of Assembly directs, that, in all cases, „where any "person, not being committed, or detained, for any criminal, "or supposed criminal matter, shall be confined, or re-"strained, of his liberty, under any colour or pretence "whatsoever," he shall be entitled to a writ of *Habeas Corpus*. Now, it is no answer to this law, to say, that, being made, before the present Constitution of the United States, was established, it could not be intended to apply to cases arising under the Constitution. The people of *Pennsylvania* still remain Citizens of the Commonwealth, as well as of the United States; and it is of as much importance to them, to be relieved from unlawful imprisonment, under colour of authority derived from the United States, as from any other imprisonment. When the present Federal Constitution was adopted, the people were not easy until they obtained an amendment, declaring that the powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, were reserved to the States respectively, or to the people. A writ of *Habeas Corpus* must, therefore, be issued, in all cases, where the right to issue it, has not been given up to the *United States*. That this right has not been given up, was my opinion, delivered in the case of *Olmstead*, where I assigned reasons, which I shall not now repeat. But that is not all. It is a principle, well established, that even in cases, where Congress might assume an exclusive jurisdiction, the authority of the States remains, until such a juris-

diction is assumed. There are many instances, in which the powers of the United States, are suffered to lie dormant: such as the power of establishing uniform laws on the subject of bankruptcies; and, while the power remains dormant, the several States regulate the subject. In subjects, also, within the jurisdiction of Congress, when they do legislate, the authority of the States is taken away, only so far as the law of the United States declares. This is exemplified in the Act establishing the Judicial Courts of the United States where, it will be found, that, in some instances, the Courts of the United States are vested with an exclusive jurisdiction; but in many more they have jurisdiction concurrent with the Courts of the several States. And, although it is true, that, by the terms of the Act, the Courts of the United States have only a concurrent jurisdiction, yet, I apprehend the construction would be the same, if the express terms had been omitted. By the 14th section of the same Act, power is given to the Judges of the United States to grant writs of *Habeas Corpus*, for the "purpose of an enquiry into the cause of "commitment; provided that they shall, in no case, extend "to prisoners in gaol, unless where they are in custody, "under, or by colour, of the authority of the United States, "or committed for trial, before some Court of the same, or "are necessary to be brought into Court to testify." Now, if it had been intended to exclude the State Judges, this is the place, in which we might expect to find evidence of such intention: for, the subject was full in the mind of the Legislature, as appears by the care, with which they restrained their own Judges, from interfering with commitments, not under the authority of the United States.

The judicial power of the United States extends to all cases in law or equity, arising under the Constitution, the laws of the United States, and the treaties made under their authority. Supposing that Congress had the right to assume an exclusive jurisdiction, in all cases founded immediately on these subjects, the exercise of it, would be intolerably grievous, without a great increase of Courts and Judges: And, even then, it would often happen, that the State Courts would

have to decide on the Constitution, Laws, and Treaties of the United States, on questions arising, collaterally, in causes within their jurisdiction. Still the authority of the United States may be preserved, by retaining, as they have retained, an appeal to their own courts. But it seems to be the general opinion, that from a decision on a *Habeas Corpus*, no appeal, or writ of Error, lies; and, thus, points of vital importance to the *United States*, may be determined by State Judges, without an opportunity of revision. This may, certainly, be a very serious evil; but it does not appear to be without remedy. For, although, by the general principles of law, an appeal, or writ of Error, might not lie; yet, the subject being within the power of Congress, they may regulate it as they please. As to an attempt, to take away from the State Courts altogether, the right of issuing a writ of *Habeas Corpus*, in any case, where a man pretends to justify an imprisonment, under the authority of the United States;—whenever the subject shall be brought before Congress, it will be found to be attended with very great if not insuperable difficulties.

I have said thus much on the point of jurisdiction (although I consider it as having been long settled, and acted upon, by the Supreme Court of this State) because some persons of high standing, in other States, for whose opinions I entertain the most sincere respect, have expressed doubts on the subject. It is a matter deserving the greatest consideration, in which the people of the different States are deeply interested. The inconvenience of clashing opinions, between Federal and State Judges, may sometimes be felt; but when I consider the situation of a Pennsylvanian, imprisoned unlawfully, by colour of a pretended authority from the United States, on the banks of the Ohio, or the shore of Lake Erie, with only one Federal Judge to whom he can apply, and that Judge in the city of *Philadelphia*, I feel as little *inclination*, as I have *right*, to surrender the authority of the Commonwealth.

But there is another objection to this *Habeas Corpus*, applicable equally to the Judges of the States, and of the Unit-

States: it is, that Mr. *Lockington* is in the situation of a *prisoner of war*. If he be so, he is not entitled to a privelege, which never could have been intended, for persons of that description. A prisoner of war is subject to the law of war; he is brought among us by force; and his interests were never, in any manner, blended with those of the people of this country. He has no municipal rights to expect from us. We gave him no invitation, and promised him no protection. His object was to injure us; and we bring him hither solely for safe keeping. Far different is the case of a great body of people, who, although now placed in the situation of enemies, by events over which they had no controul, yet, in their hearts, may bear no enmity to the United States: nay, who may even prefer this country to their native soil. Many of them came among us, with a view of sharing our fortunes. Our laws held out invitations; they were suffered to acquire property, personal and real; we permitted them to swear, that they intended to renounce their native sovereign, and become fellow citizens with us. Many, it is true, came merely on business, without such intent, and may be really inimical. But even they had that implied promise, which civilized nations have long been supposed to make, that, in case of sudden war, there should be permission to depart in a reasonable time, without injury to person, or property. I am far from denying, however, that the condition of these people is to be decided, not by a reference to the usual courtesy of nations, but by our own laws. Congress had the power of legislating on the subject: they have exercised that power; and their acts are paramount to all foreign customs. It is these acts, which we are now to consider, and it will be found, that they are such, as the most civilized nation need not blush to avow. They preserve a sacred regard for Treaties; and, in cases where no Treaty exists, they vest the President of the United States with full powers, to be exercised "accord-"ing to the dictates of humanity, and national hospitality;" not forgetting, however, a due regard to the public safety. It has lately been decided, by the Supreme Court of *New York*, in the case of *Clark* vs. *Money* (10 Johns. 59.) that Britis.

Aliens, residing in the United States, so far from being considered as prisoners of war, may sue, and be sued, as in time of peace.

The Act respecting Alien Enemies, was passed on the sixth of July one thousand seven hundred and ninety eight. In considering it, I shall not pursue the wide range, which was taken in the argument of this case. In fixing its true construction, it is of no importance, under what administration it was enacted; by whom it was brought forward; or by whom advocated, or opposed, on its passage. It is the law of the land; and, being so, it becomes the duty of every individual to obey, and of every Court to enforce obedience.

It begins by enacting, that when war is declared, or invasion by a foreign nation perpetrated, attempted, or threatened, and the President of the United States, shall have made public proclamation of the event "all natives, citizens, "denizens, or subjects, of the hostile nation, or Government, "being males of the age of fourteen years and upwards, who "shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured "and removed as Alien Enemies." Here is a broad proposition, standing as a foundation, for summary proceedings, against persons, who are declared to be in the situation of *Alien Enemies.* I do not consider, as has been contended by Mr. *Lockington's* counsel, that the *apprehending, restraining,* and *securing,* here mentioned, are to be intended solely for the purpose of *removal out of the United States.* It is a provision for the public safety; which may require, that the Alien should *not* be *removed,* but kept in the country under proper restraints; and the nature and degree of these restraints, in cases where there has been no misbehaviour, may depend, in some measure, on the treatment, which the hostile Government gives to citizens of the United States, who may chance to be within its power. The Act, then proceeds to declare, that "the President of the United States shall be authorised, "in any event as aforesaid, by his Proclamation thereof, or "other public Act, to direct the conduct to be observed on "the part of the United States, towards the Aliens, who shall

"become liable as aforesaid; the manner and degree of the "restraint, to which they shall be subject; and in what cases "and upon what security, their residence shall be permitted; "and to provide for the removal of those, who, not being "permitted to reside within the United States, shall refuse, "or neglect, to depart therefrom; and to establish any other "regulations, which shall be found necessary in the premi-"ses, and for the public safety." Then follows a proviso, for securing the observance of treaties, which is not material in this case; because, at the time of the declaration of war, there was no treaty, regulating the subject, in existence, between the United States and Great Britain.

In the second section of the Act it is enacted.

"That after any proclamation shall be made as afore-"said, it shall be the duty of the several Courts of the Uni-"ted States, and of each State, having criminal jurisdiction, "and of the several Judges and Justices of the Courts of the "United States, and they shall be, and are hereby respective-"ly, authorised upon complaint, against any Alien Enemy, or "Alien Enemies, as aforesaid, who shall be resident and at "large within such jurisdiction or district, to the danger of "the public peace or safety, and contrary to the tenor or in-"tent of such Proclamation, or other regulations which the "President of the United States shall and may establish in "the premises, to cause such Alien or Aliens to be duly ap-"prehended and convened before such Court, Judge or Jus-"tice; and after a full examination and hearing on such "complaint, and sufficient cause therefor appearing, shall and "may order such Alien or Aliens, to be removed out of the "territory of the United States, or to give sureties of their "good behaviour, or to be otherwise restrained, conformably "to the Proclamation or regulations which shall and may be "established as aforesaid, and may imprison, or otherwise "secure such Alien or Aliens, until the order which shall "and may be made, as aforesaid, shall be performed."

It cannot be doubted, but that the provision in the first section, considered without reference to the second, authori-

ses the President to establish a regulation, that all Alien Enemies of a certain description, shall retire immediately to a place to be appointed by the Marshal; and that, in case of non-compliance, the Marshal shall remove them. But the second section, having authorised certain Courts and Judges, upon complaints made against Alien Enemies, to have them apprehended, and brought before them; and, after hearing, to make such order as may be necessary, for carrying the regulations of the President into effect; there is not wanting strong colour for an argument, that the only manner of executing the regulations, is by complaint to a Court, or Judge. This is a point well worthy of serious consideration. I have considered it attentively; and I shall give the reasons, which have induced me to conclude, that, notwithstanding the second section, the President was authorised, to make an order for the removal of the Alien Enemy by the Marshal, in the first instance. It is never to be forgotten, that the main object of the law is, to provide for the safety of the Country, from enemies who are suffered to remain within it. In order to effect this safety, it might be necessary to act on sudden emergencies. It is well known, that the United States are exposed to great danger, in a war with an enemy, who commands the sea. Bounded by the Atlantic Ocean to a great extent, with numerous bays and navigable rivers, penetrating the very heart of the Country; there is no knowing when, or where, the attack may be made. Without incurring the charge, then, of undue severity, prudence might require, that Alien Enemies, residing in large cities, should be removed, with more expedition, than the formalities of law admit. The President being best acquainted with the danger to be apprehended, is best able to judge of the emergency, which might render such measures necessary. Accordingly, we find, that the powers vested in him, are expressed in the most comprehensive terms. He is to make any regulations, which he may think necessary for the public safety, so far as concerns the treatment of Alien Enemies. It is certain, that these powers create a most extensive influence, which is subject to great abuse: but *that* was a matter for the considera-

tion of those, who made the law, and must have no weight, with the Judge, who expounds it. The truth is, that, among the many evils of war, it is not the least, to a people, who wish to preserve their freedom, that, from necessity, the hands of the Executive power, must be made strong, or the safety of the nation will be endangered.

But, it may be asked, what is the use of the provision in the second section, concerning Courts and Judges, if the regulations of the President may be executed, without resorting to them? The answer is, that the use is great. In the first place, where the Marshal is ordered to make the removal, he is at liberty to apply to the Judges, and there may arise cases, in which he will find it prudent, to strengthen himself by the judicial authority. But besides, many regulations may be made, which contain no order for the Marshal to act, or which may direct him to proceed by way of complaint to the Judges. If the regulation in question had simply been, that Alien Enemies should retire to a place to be appointed by the Marshal, any citizen might have complained of an Alien Enemy, who declined to comply; and a Judge might have made and enforced an order for his removal. There may be various regulations for the general conduct of Alien Enemies, without pointing out the mode of carrying them into effect: and, in all such cases, the Courts may take cognizance of them. There may be regulations, which barely order, that certain things shall be done, or shall not be done, without defining the penalty in case of disobedience. In such cases, the Judges to whom complaint is made, are vested with a considerable discretion. They may, according to the nature of the case, either direct the Alien Enemy to be removed out of the United States, or to give security for his good behaviour, or to be imprisoned, until the order of the President is complied with. It would be a waste of time to point out all the uses of this provision, respecting the power of Courts and Judges. To those, who reflect on the subject, many more, than I have mentioned, will suggest themselves. It is worthy of remark, that in the third section of the Act, it appears, that the President may, by his warrant directed to the Mar-

shal, order him to apprehend any Alien Enemy, and remove him out of the Territory of the United States. Now, it is difficult to conceive a reason, why the President should be authorised to remove any Alien Enemy *out of the Country*, without assigning a cause, and yet that he should not be permitted to direct, that those, of a certain description, should repair to a certain place *within the United States*, and in case of a refusal, that the Marshal should remove them. The particular reason assigned by Mr. *Lockington*, for not complying with the order of the President, I cannot but very much regret. But, although it absolves him from the charge of obstinate and perverse disobedience, yet, it can have no effect on my judgment, as it is a subject, on which I have no power to act. I am not without hopes, however, that this public discussion may bring to the mind, both of our own and the British Government, a matter, which seems not to have been attended to: that is to say; that persons, detained in a foreign land, cut off from their funds, and without the opportunity of pursuing their usual occupations, may be involved in distress, which demands relief.

But, supposing the President had power to make the regulation under which the Marshal has acted, it is denied, that he ever did make it. The Act of Congress requires, that the President should establish regulations, by his Proclamation, *or other public act*. He has made no Proclamation; but has he not made a *public act*? The first order was issued from the Department of State, although it does not appear to be signed by the Secretary of State, nor is the name of the President mentioned in it. The Attorney for the United States, says, that the orders of the President are usually communicated in this form. If the matter rested on this notification, I should be somewhat at a loss what to think of it. The President could not transfer his power to the Secretary of State; and as there is no mention of his name, some evidence might be necessary, to show that it was really *his* order, issued from the Department of State. But the order issued from the Commissary General of Prisoners, puts the matter out of doubt; for, the regulations there established,

which refer to, and adopt, the former orders from the Department of State, are expressly declared to be the act of the President, although they are not signed by him, but by the Commissary. This is sufficient to satisfy me. Being published as the orders of the President, signed by an officer of high trust, and never disavowed, I consider them as the *public Acts of the President.*

I must add a few words, with respect to the return to this *Habeas Corpus.* The writ is directed to *Joseph Corman*, keeper of the Debtor's Apartment of the Prison of the City and County of Philadelphia, who made return, that he detained Mr. *Lockington* by virtue of a written order from *John Smith*, Esq. Marshal of this District, by which he was commanded to keep the said Mr. *Lockington*, who had violated the orders of the President, &c. until he should be discharged by law. Connected with this return, I must take the suggestion presented by the Marshal, and verified by his oath; by which it appears, that he placed Mr. *Lockington* in the Debtor's Apartment, until he could be conveyed, or would voluntarily go, to *Reading.* The Marshal's order to the keeper of the prison has, at first view, somewhat the air of a judicial act, for which he, certainly, can have no authority. But the peculiar circumstances of the United States, with regard to prisons, will serve to explain the matter. They have no prisons of their own, and make use of the State prisons, by permission of the several States. Although the Marshal held Mr. *Lockington* in custody, in a ministerial capacity, it might be necessary for him, to give the keeper of the prison, some document, to authorise his detaining him. So that I consider Mr *Lockington* as, in fact, in custody of the Marshal. Being of opinion that the Marshal had a right to take him into custody, and place him in the Debtor's apartment, for safe keeping, until he could conveniently be removed to *Reading*, I must order, that *Charles Lockington*, be remanded to the custody of the keeper of the Debtor's Apartment.

The Prisoner was, accordingly, remanded.

APPENDIX:

Containing the Acts of Congress, and the public Acts and Regulations of the President of the United States, respecting Alien Enemies, with Extracts from the Official Instructions to the Marshals of the Districts and Territories of the United States, which were referred to, in Lockington's case.

No. 1.

AN ACT

Declaring War between the United Kingdom of Great Britain and Ireland and the Dependencies thereof, and the United States of America and their Territories.

BE *it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That WAR be and the same is hereby declared to exist between the United Kingdom of Great Britain and Ireland and the dependencies thereof, and the United States of America and their Territories; and that the President of the United States be and he is hereby authorised to use the whole land and naval force of the United States, to carry the same into effect, and to issue to private armed vessels of the United States, commissions or letters of marque and general reprisal, in such form as he shall think proper, and under the seal of the United States, against the vessels, goods, and effects of the Government of the same United Kingdom of Great Britain and Ireland, and of the subjects thereof.

H. CLAY,
Speaker of the House of Representatives.
WM. H. CRAWFORD,
President of the Senate pro tempore.

June 18, 1812. Approved, JAMES MADISON.

No 2.

By the President of the United States, of America.
A PROCLAMATION.

WHEREAS the Congress of the United States, by virtue of the Constituted Authority vested in them, have declared by their Act, bearing date the eighteenth day of the present month, that War exists between the United Kingdom of Great Britain and Ireland, and the dependencies thereof, and the United States of America and their Territories; Now, therefore, I, JAMES MADISON, President of the United States of America, do hereby proclaim the same to all whom it may concern: and I do specially enjoin on all persons holding offices, civil or military, under the authority of the United States, that they be vigilant and zealous, in discharging the duties respectively incident thereto: And I do moreover exhort all the good people of the United States, as they love their country; as they value the precious heritage derived from the virtue and valor of their fathers; as they feel the wrongs which have forced on them the last resort of injured nations; and as they consult the best means, under the blessing of Divine Providence, of abridging its calamities; that they exert themselves in preserving order, in promoting concord, in maintaining the authority and the efficacy of the laws, and in supporting and

invigorating all the measures which may be adopted by the Constituted Authorities, for obtaining a speedy, a just, and an honorable peace.

IN *testimony whereof* I have hereunto set my hand, and caused the seal of the United States to be affixed to these presents.

(SEAL.) DONE at the City of Washington, the nineteenth day of June, one thousand eight hundred and twelve, and of the Independence of the United States, the thirty-sixth,

(Signed) JAMES MADISON.

By the President,

(Signed) JAMES MONROE,
Secretary of State.

No. 3,

AN ACT *Respecting Alien Enemies.*

Sect. 1. *BE it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That whenever there shall be declared war between the United States and any foreign nation or government, or any invasion or predatory incursion, shall be perpetrated, attempted, or threatened against the Territory of the United States, by any foreign nation or government, and the President of the United States shall make public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upwards, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies. And the President of the United States shall be, and he is hereby authorised, in any event, as aforesaid, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, towards the aliens who shall become liable, as aforesaid; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those, who, not being permitted to reside within the United States, shall refuse or neglect to depart therefrom; and to establish any other regulations, which shall be found necessary in the premises and for the public safety: Provided, That aliens resident within the United States, who shall become liable as enemies, in the manner aforesaid, and who shall be not chargeable with actual hostility, or other crime against the public safety, shall be allowed for the discovery, disposal, and removal of their goods and effects, and for their departure, the full time which is, or shall be stipulated by any treaty, where any shall have been between the United States, and the hostile nation or government, of which they shall be natives, citizens, denizens or subjects: and where no such treaty shall have existed, the President of the United States may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality.

Sect. 2. *And be it further enacted,* That after any proclamation shall be made as aforesaid, it shall be the duty of the several courts of the United States, and of each State, having criminal jurisdiction, and of the several Judges and Justices of the Courts of the United States, and they shall be, and are hereby respectively, authorised upon complaint, against any alien enemy, or alien enemies, as aforesaid, who shall be resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President of the United States shall and may establish in the premises, to cause such alien or aliens to be

duly apprehended and convened before such Court, Judge or Justice; and after a full examination and hearing on such complaint, and sufficient cause therefor appearing, shall and may order such alien, or aliens, to be removed out of the Territory of the United States, or to give sureties of their good behaviour, or to be otherwise restrained, conformably to the proclamation or regulations which shall and may be established as aforesaid, and may imprison, or otherwise secure such alien or aliens, until the order which shall and may be made, as aforesaid, shall be performed.

Sect. 3. *And be it further enacted*, That it shall be the duty of the Marshal of the district in which any alien enemy shall be apprehended, who by the President of the United States, or by order of any Court, Judge, or Justice, as aforesaid, shall be required to depart, and to be removed, as aforesaid, to provide therefor, and to execute such order, by himself or his deputy, or other discreet person or persons, to be employed by him, by causing a removal of such alien out of the Territory of the United States; and for such removal, the Marshal shall have the warrant of the President of the United States, or of the Court, Judge, or Justice ordering the same, as the case may be.

JONATHAN DAYTON,
Speaker of the House of Representatives.
THEODORE SEDGWICK,
President of the Senate, pro tempore.

Approved, July 6, 1798: JOHN ADAMS,
President of the United States.

No. 4.

AN ACT

Supplementary to the act, entitled "An Act respecting alien enemies."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the proviso contained in the act, entitled "An act respecting alien enemies," approved on the sixth day of July, one thousand seven hundred and ninety-eight, shall be extended or construed to extend to any treaty, or to any article of any treaty, which shall have expired, or which shall not be in force, at the time when the Proclamation of the President shall issue.

H. CLAY,
Speaker of the House of Representatives.
WM. H. CRAWFORD,
President of the Senate pro tempore.

July 6, 1812. Approved. JAMES MADISON.

No. 5.

AN ACT

To prohibit American vessels from proceeding to or trading with the enemies of the United States and for other purposes. (Passed the 6th of July, 1812. 11 vol. 299.)

Sect. 6, *And be it further enacted*, That the President of the United States be, and he is hereby, authorised to give, at any time within six months after the passage of this act, passports for the safe transportation of any ship, or other property, belonging to British subjects, and which is now within the limits of the United States.

No. 6.

[Notice published in "The Democratic Press," of the 10th of July, 1812.]

Department of State, July 7th, 1812.

NOTICE.

All British subjects within the United States, are required forthwith to report to the marshals (or to the persons to be appointed by them) of the respective states or territo-

ries within which they may reside, their names, their age, the time they have been in the United States, the persons composing their families, the places of their residence, and their occupations or pursuits, and whether, and at what time, they have made the application to the courts required by law, as preparatory to their naturalization; and the marshals, respectively, are to make to the Department of State returns of all such British subjects, with the above circumstances annexed to their names.

No. 7.

[Notice published in "The Democratic Press," of the 22d October, 1812.]

United States,
Pennsylvania District,

Marshal's Office, 10*th July*, 1812,

In obedience to the instructions from the Department of State,

NOTICE IS HEREBY GIVEN,

That all British subjects, residing within the district of Pennsylvania, are required forthwith to report themselves to me, at my office, in the city of Philadelphia, or to one of the persons in the annexed schedule, marked (A) by me duly appointed, in the counties of Pennsylvania respectively to receive such report. Although it is presumed, by the government of the United States, that all British subjects will act with propriety, and obey the laws which relate to them, as alien enemies; yet, it is rendered my duty, if any of them should disappoint this reasonable expectation, or should neglect to make the report above specified, to communicate the same to the Department of State, that the President may be enabled to act as the circumstances of the case shall require, and that full information may be possessed, upon the important subject of this notice.

JOHN SMITH, *Marshal*.

(A.)

William B. Irish, Pittsburgh, Allegheny County.
James Weston, Erie, Erie County.
David Reilly, Bedford, Bedford County.
Richard Parker, Carlisle, Cumberland County.
Edward Davis, Churchtown, Lancaster County.
Thomas Burnside, Bellefonte, Centre County.
Josiah Wright, Wilkesbarre, Luzerne County.
Isaac Lyman, Coudersport, in the County of Potter.
Arnold Hunter, Smithport, in the county of M'Kean.
James M'Cluney, Washington, Washington County.
Samuel Jack, Greensburg, Westmoreland County.
George Manypenny, Union Town, Fayette County.
Henry Donnel, Williamsport, Lycoming County.
John Hetrick, Chambersburg, Franklin County.
Matthew Ridgeway, Milford, Wayne County.
George Marks, Reading, Berks County.
General Abraham Horn, Easton, Northampton County.
Rees Lloyd, Cambria, Cambria County.

Having received additional instructions from the Department of State, and having well-grounded reason to believe that there are a number of Alien Enemies (British subjects) who have neglected to conform to the foregoing orders, particularly a number who have arrived since the declaration of war, I have to request the assistance of all the citizens of this district to be aiding and enforcing the laws in the premises, by giving

information to this office, or the persons appointed by me, of all British subjects, residing in their respective neighbourhoods.

JOHN SMITH, *Marshal.*

Marshal's Office, Philadelphia, Oct. 22, 1812.

No. 8.

[Notice published in "The Democratic Press," of the 11th of February, 1813.]

NOTICE.

Department of State, Feb. 6, 1813.

Alien enemies arriving within the limits of the United States, from foreign countries, are, immediately on their arrival, to report themselves to the marshal of the United States, or to his deputy for the district within which they may be landed.

No alien enemy can hereafter proceed from a port or place within one district of the United States, to a port or place within another district of the same, by land or water, without a special passport from the marshal or from the collector of the customs, as the case may be.

Alien enemies, permitted to travel from one district of the United States to another district thereof, are forthwith, on their arrival, to report themselves to the marshal, to whom they are to exhibit their passports.

The marshals and the collectors of the customs of the several districts of the United States, are particularly charged with the execution of the provisions of this notification.

No. 9.

[Notice published in "The Democratic Press," of the 3d of March, 1813.]

NOTICE.

Department of State, Feb. 23, 1813.

Alien enemies, residing or being within forty miles of tide water, are required forthwith to apply to the marshals of the states or territories in which they respectively are, for passports to retire to such places, beyond that distance from tide water, as may be designated by the marshals. This regulation, however, is not to be put in force without special notice against such alien enemies, not engaged in commerce, as were settled previously to the declaration of war in their present abode, or are there pursuing some regular and lawful occupation, unconnected with commerce, and who obtain, monthly, from the marshal of the district in which they reside, permission to remain where they are.

No. 10.

[Notice published in "The Democratic Press," of the 19th of July, 1813.]

RESPECTING ALIENS.

Circular to the Marshals of the United States.

Office of the Commissary General of Prisoners, Washington, May 31, 1813.

Sir,

The President, desirous of defining more particularly the treatment of Alien Enemies, and of extending as much indulgence to them, as may be compatible with the precautions made necessary by the present state of things, directs, that, in regard to such as may be within your district, you will be governed by the following rules:

You will cause to be removed, as heretofore prescribed, if not already done, under former orders from the Department of State, all who are not females, or under eighteen years of age, or who are not labourers, mechanics, or manufacturers, arrived in the country previous to the declaration of war, and actually employed in their several vocations, subject, however, to the following modification:

Persons, of whatever calling, except in cases where you may have knowledge of improper conduct, who have, according to law, declared their intention to become citizens of the United States, at least six months before the declaration of war, and in addition, are married to natives, or are owners of real property, or, if in commerce, in such commerce as is exclusively internal, are to be permitted to remain at, or, if removed, to return to, their usual places of residence; provided such residence be not at or in the immediate vicinity of a town or post on navigable water, where military works are maintained, or a body of troops are stationed.

You will take care to call for and be governed by proper proofs of the facts alledged in each case; and as to all persons so permitted to return, you are requested to observe the same precautions and restrictions as are used towards alien enemies not removed; and you are not to construe the relaxation hereby authorised as any bar to a future removal or apprehension of persons relieved by it, should general circumstances require or particular cases make necessary such a measure.

You will make to this office weekly returns of all the cases coming to your knowledge of persons, of the class designated to remain, or to return, who by misconduct have forfeited their claim to such indulgence, and of the course you have taken as to each: as also of the persons of the class removed, or designated to be removed, who, from extraordinary circumstances of hardship, and from their character and deportment may, in your opinion, be entitled to particular consideration, setting forth all the circumstances on which each claim is founded.

I have the honour to be, &c.

J. MASON.

No. II.

EXTRACTS FROM THE OFFICIAL INSTRUCTIONS OF THE MARSHALS.

1. From *the Secretary of State*, 11th July, 1812. The Secretary refers to the Notice of the 7th of July, 1812, issued from the Department of State, requiring Alien Enemies to report themselves to the Marshals; and then proceeds as follows:—"As all British subjects, by becoming Alien Enemies, have essentially changed their relation to the United States, and have new duties to perform, it is proper that they should be made acquainted with these duties. To give them the requisite information, you are requested to cause the laws, which relate to the subject to be published forthwith, in the several gazettes, which publish the laws of the United States in your state. In like manner, you will give public notice of the persons whom you may appoint to assist you, in taking the reports to be made to you. Although it is presumed, that all the British subjects will act with propriety, and obey the law, which relates to them, as alien enemies, yet should any of them disappoint this reasonable expectation, it will be your duty to make an early and special report of the improper conduct of such person *to this Department, that the President may be enabled to discharge the duty imposed on him, under such circumstances.* Should any of them fail to report themselves, you will, also, on being apprised thereof, communicate the same to this Department, as such omission will be evidence of great misconduct in the party."

2. From *the Secretary of State*, 13th of October, 1812.—"In case of the arrival of Alien Enemies within your District from abroad, you are to take measures, to cause them to report themselves to you; and to designate for them particular places of residence, at least thirty miles distant from tide-water, to the limits of which designation they are to be confined."

3. From *The Secretary of State*, 29th of October, 1812.—"In answer to your letter of the 22d instant, relative to the meaning of that part of your instructions of the 13th of

" this month, concerning the arrival of Alien Enemies within your District from abroad,
" I have to inform you, that you have very accurately construed *the intentions of the go*
" *vernment*, in extending it to all arrivals of persons of that description, subsequent to
" the war."

4. From *the Secretary of State*, 6th February, 1813.—" You are requested not to per-
" mit Alien Enemies, in future, to proceed from any city, town, or place, within your
" district, to another city, town, or place, of the United States, by *land*, unless you are
" acquainted with the nature of their pursuits, know them to have a reputation for pro
" bity, and can confide in their good intentions towards the United States. Each indivi-
" dual of this description, who has previously reported himself to you, and whom you
" may authorise to depart, is to be furnished with a passport, printed forms of which I
" now transmit to you, to be used for that purpose. On application of any Alien Enemy,
" for a certificate, that he has previously and duly reported himself to you, you are to
" give him one, for the information of the collector of the customs, who is, also, in-
" structed on this head, with regard to Alien enemies proceeding by water."

5. From *the Secretary of State*, 23d of February, 1813.—" You will herewith receive
" a copy of *a printed notice, to Alien Enemies, issued from the Department of State this*
" *day*. As it sufficiently explains its object, it is only necessary to remark, that *all*
" *those, to whom it has reference, engaged in commerce, who do not immediately conform to*
" *the requisition, are to be taken into custody, and conveyed to the place assigned to them,*
" unless special circumstances require indulgence. In such cases, reports are to be made
" to this Department: And that all those of other occupations, whom it may not be
" deemed proper, to suffer to remain within the prescribed distance of tide-water, be
" immediately notified to repair to the interior of the country, to which they are en-
" joined to confine themselves. This letter is accompanied by two kinds of blank pass
" ports, corresponding with the provisions of the notice, which you will fill up and sign
" agreeably to the tenor of each."

6. From *the Secretary of State*, 12th of March, 1813.—" The regulations concerning
" Aliens, established in conformity with the Notice from this Department of the 23d ult.
" and your instructions of the same date, *are to be enforced*; and the persons designated
" for removal are immediately to repair to the places assigned them for residence. In
" peculiar and extraordinary cases of hardship, and where the character and deportment
" of the parties entitle them to particular consideration, you will refer the question of
" indulgence to this Department, setting forth all the circumstances, on which the claim
" is founded. *But in no instance is the removal of the individual to be delayed for an an-*
" *swer from Washington.* You will make an accurate report of the places of residence,
" which you may assign to each Alien, with a description of his person."

7. From *the Secretary of State*, 15th of April, 1813.—" *The President* having appointed
" John Mason, Esq. of *Georgetown*, in the District of *Columbia*, Commissary General for
" Prisoners of war, *including the superintendancy of Alien Enemies*, you are requested, in
" future, to address all letters and documents, on those subjects, to that gentleman; and
" to obey all instructions from him, in relation to the same, unless otherwise directed
" from this department."

8. From *the Commissary General of Prisoners*, &c, 31st of May. 1813. A circular let-
ter of instructions, respecting alien enemies, inserted in this Appendix, Article 10.

9. From *the Commissary General of Prisoners*, &c. 19th August, 1813. " It by no
" means follows, that, because an Alien Enemy is more distant from the navigable waters,
" than the line, drawn by the general Instructions from the Department of State, beyond
" which to remove persons of that description, by way of precaution; that he is to be
" permitted to remain, under reprehensible conduct, undisturbed. In the case of an Alien

"Enemy, who shall so far abuse the indulgence and hospitality of the Country, in time of "war with his nation, as to declare his adherence to the enemy, and disposition to support "their interest, or who shall attempt to distrust the confidence reposed in their govern- "ment, by our citizens: *you will, first taking care to establish the fact, place him immedi- "ately in close confinement.*"

10. From *the Commissary General of Prisoners*, &c. 12th November, 1813. "It having "been found, that the lenity shown to Alien Enemies, remaining in the country, has "been frequently abused by that class, to whom a residence remote from tide water has "been assigned; and that some have gone off, clandestinely, to the enemy; it has been "determined, to guard against such abuses, in future, by requiring an honorable engage- "ment, from all such persons, to be of good conduct, and to observe the limits prescribed "to them. You are, therefore, instructed, *by order of the President*, with the least possible "delay, after the receipt of this letter, to offer for execution, to every Alien Enemy "within your district, who has been, or may be hereafter, removed from the vicinity of "tide-water, a parole of honor, in the form inclosed; *and, if refused, to place every per- "son so refusing, without distinction, forthwith, in close confinement.* Since this cannot, "when understood, be considered a harsh measure, by any, but those of evil design, you "are requested to explain, to all concerned, why it has become necessary."

Form of the Parole.

WHEREAS, I an Alien and a British subject, described at the foot hereof, have been directed by the President of the United States of America, to repair to a certain distance from tide water; and the Marshal of the district of has heretofore granted me a passport to proceed to within the district aforesaid; and leave has been granted me to reside in aforesaid, and to go from time to time, at my own discretion, to a distance therefrom not exceeding five miles, upon condition that I give my parole of honor, not to withdraw from the bounds so prescribed, without leave for that purpose from the said Marshal; that I will behave with due respect to the laws and authorities of this country; and also, that I will not, directly or indirectly, carry on a correspondence with any of the enemies of the United States, or receive, or write any letter or letters to or from any Alien Enemy whomsoever, but through the hands of the said Marshal, in order that they may be read and approved by him: I do hereby declare that I have given my parole of honor accordingly, and that I will keep it inviolably.

11. From *the Commissary General of Prisoners*, &c, 12th of November, 1813. "*The "course you have taken, as to Charles Lockington, is entirely correct.* The regulations of "*the Government* must be enforced; and, if rigour is made necessary by the conduct of "persons, who have constantly experienced only mildness, at its hands, rigour must be "used. It will be proper to offer to Mr. *Lockington*, the alternative of the Parole, this- "day forwarded to you; *and if he does not accept it, to hold him in confinement.*"*

12. From *the Commissary General of Prisoners*, &c. 17th of November, 1813. "With refe- "rence to the Circular Letter addressed to you from this office, on the 12th inst. relative "to the treatment of Alien Enemies (to which your particular and immediate attention "is requested) you will be pleased to understand, that no person, who is imprisoned, un- "der the order conveyed in that letter, is to be liberated, and admitted to parole, but by "special order from this office."

* This letter was received by the Marshal, during the discussion on the *Habeas Corpus*, and the Parole publicly tendered to Mr. *Lockington*. Mr. *Hare*, his Counsel, declined accepting it; but he said that his Client, if permitted, would leave the United States

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